

**STATEMENT OF
KAREN J. HEDLUND, CHIEF COUNSEL
FEDERAL HIGHWAY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
JOINT MICHIGAN HOUSE OF REPRESENTATIVES
AND
SENATE TRANSPORTATION COMMITTEES
HEARING ON PUBLIC-PRIVATE PARTNERSHIPS**

SEPTEMBER 15, 2009

Chairperson Byrnes and Members of the Committees, thank you for the opportunity to appear before you today to discuss the role of public-private partnerships in financing and managing transportation infrastructure.

Before I address the issue of public-private partnerships, I would like to briefly mention our efforts to implement the American Recovery and Reinvestment Act of 2009. Signed into law by President Obama on February 17, 2009, the Recovery Act is an unprecedented effort to jumpstart our economy, create or save millions of jobs, and put a down payment on addressing long neglected infrastructure challenges so our country can thrive in the 21st century. The Recovery Act is a lifeline for Americans who work in construction and have been especially hard hit by the recession.

On March 3, 2009, President Obama and Vice President Biden joined Secretary LaHood at the Department of Transportation (DOT) to announce the availability to the States of nearly \$26.7 billion for highway investment, including over \$847.2 million for Michigan. Within hours of the President's announcement, States began approving projects—in full compliance with all Federal laws and regulations.

Just six weeks after approving the first project, the President and Vice President returned to DOT on April 13 to celebrate the 2000th transportation project approved for funding—rebuilding an approximately \$43.9 million interchange on I-94 in Kalamazoo County right here in Michigan. Construction is now well underway on this project, which will improve safety and reduce congestion along one of Michigan's most important freight corridors.

I understand that most of the work was completed by Memorial Day on Michigan's first Recovery Act project—reconstruction and resurfacing along I-75 in Ogemaw County.

The State is also using Recovery Act funds for important work on M-59 in Oakland County to add an additional lane, reconstruct ramps and interchanges, rehabilitate bridges, and address noise abatement issues. This project will help reduce congestion along this very important corridor in Michigan.

These are just a few examples of how, in Michigan, Recovery Act dollars are providing needed investments for our people and in our infrastructure. This is happening throughout the country. Every new project obligated is a signal for States to advertise contracts, and for contractors to begin hiring workers and ordering materials such as steel, asphalt, and concrete. Recovery Act projects will save lives, while strengthening the economy by helping our highway system move people and goods more efficiently and effectively.

The Federal Highway Administration (FHWA) reached a significant milestone two weeks ago with the approval of the 7000th highway project funded by the Recovery Act. We are working diligently to ensure that funds for projects in Michigan and nationwide continue to be distributed quickly, wisely, and with unprecedented transparency and accountability.

As each project is approved and construction begins, we are seeing a reenergized spirit of communication and partnership among FHWA, States, Metropolitan Planning Organizations, local governments, and the transportation industry. FHWA is also hearing good news from States that many projects are running under budget, and these savings are now being programmed for additional needed work and will be creating even more jobs. In addition to the near-term employment impacts, these highway infrastructure investments will return economic benefits to Michigan for many years to come.

While the Recovery Act is helping to set us on the path toward economic recovery, we are mindful that the transportation industry is facing unprecedented challenges, including enormous resource constraints at a time when demand for service is increasing, aging infrastructure, and increasing maintenance costs. The situation is exacerbated by a cash shortfall in the Highway Trust Fund in recent years. These challenges present opportunities for us to identify sustainable funding mechanisms for surface transportation.

PUBLIC-PRIVATE PARTNERSHIPS

In today's constrained fiscal environment, it is important that all options be on the table for financing and implementing critical improvements to our Nation's transportation infrastructure. By involving the private sector where appropriate, we can make our scarce public resources go further and allow them to be deployed more effectively toward activities and responsibilities that are best managed by the public sector.

It is important to note that private sector involvement in transportation can take place at many levels. Public-private partnerships and privatization are not the same thing. Indeed, the current process for developing transportation projects is a public-private partnership of sorts, in which most construction work is bid out to private companies, and transportation agencies employ contracting for a whole range of services. What we typically think of as public-private partnerships in transportation simply extends this involvement into other areas, such as finance and operations, which have traditionally been the domain of public agencies.

As our State and local partners explore new partnerships with the private sector, it is paramount that the public interest is protected. Financial risks and rewards on both the public and private sides must be appropriately balanced, to ensure that the traveling public gets real value in return, and that people with limited travel options are not disadvantaged. The financial returns realized by the private sector must be appropriately related to the risks they bear and any operational efficiencies that they are able to achieve.

It is also important to keep in mind that public-private partnerships alone cannot solve the transportation funding dilemma that we face. They can play a key role in certain areas and for certain types of projects, but a more efficient project delivery method or financing mechanism is not the same thing as a new revenue stream. Engaging the private sector can bring in additional financing tools and procurement options, but closing the funding gap for transportation infrastructure will involve much larger issues of funding priorities and revenue sources.

FHWA ROLE IN PUBLIC-PRIVATE PARTNERSHIPS

In October 2008, the FHWA established an Office of Innovative Program Delivery to serve as a resource to States as they explore innovation. The office provides our partners a one-stop source for information, education, and technical assistance on all aspects of public-private partnerships as well as other innovative strategies. The office offers a host of services related to Federally-backed loans, innovative financing, road pricing and tolling, and public-private partnerships. In its first year, the office established the Innovative Program Delivery Academy to deliver an extensive array of courses to FHWA Headquarters and field staff. We want staff from our Agency to serve as knowledgeable and honest brokers of information so that they can effectively support their State partners exploring new ways of delivering transportation projects. Next year, the office will provide a suite of tools and guidance documents that State practitioners can use to evaluate alternative project delivery strategies. Additionally, the office will sponsor regional workshops to provide training and technical assistance to our State partners. Finally, early next month, we will roll out a website that will provide the transportation community with resources for asking and answering questions about project delivery. The office is guided by a 50-State view and is quickly becoming a trusted resource. Its overarching goal is to help State and local transportation agencies ask the right questions at the right time about program and project financing, procurement and revenue generation.

STATE AUTHORITY FOR PUBLIC-PRIVATE PARTNERSHIPS

In order for agencies to engage in a public-private partnership for a particular transportation project, the relevant State or local legislative authority must provide express authorization. The DOT prepared model public-private partnership legislation to provide States with an example of the basic elements to address in public-private partnership legislation. The model is based on a survey of existing State statutes that authorize public-private initiatives. The model legislation is not a recommendation by DOT that States include particular provisions in their public-private partnership legislation. Rather, the model legislation highlights the types of issues that a State should

consider when pursuing public-private partnerships for transportation. Public-private partnership laws vary widely from State to State in, among other things, the types and number of projects that are authorized and in the breadth of the authorization delegated by the legislature to State or local transportation agencies.

If State policy makers intend to give serious consideration to public-private partnerships, they should consider providing State agencies with the authority to enter into partnerships with the private sector and approve specific activities in conjunction with transportation development. State contractual powers relate to the ability of the State to make commitments to encourage partnership arrangements. This ability depends on enabling legislation. If the State transportation agency does not have adequate powers, partnerships will not be created, because private entities will have no way to develop secure financial relationships with the State.

Enabling legislation should be comprehensive and provide adequate powers to support public-private partnerships, as well as flexible enough to deal with unforeseen needs. To be effective, State public-private partnership legislation should designate a lead State agency (usually the State department of transportation or toll authority). The designated lead agency should have the authority to act on behalf of the State; therefore, it must have certain statutory powers. These powers may include the power to procure projects through negotiation; to enter into binding agreements; to acquire right-of-way through eminent domain; and to blend Federal, State, local, and private funds on a project. Without some of these powers, it will be difficult for a State to undertake public-private transportation initiatives.

Over half of the States have significant public-private partnership authority, and other State and local authorities in the U.S. are increasingly considering public-private partnerships for transportation infrastructure.

TRANSPORTATION SYSTEM PRIORITIES

As we approach a new authorization of our surface transportation programs and search for long-term options for funding surface transportation, we can expect continued dialogue on the national stage regarding public-private partnerships and other innovative financing tools such as tolling, value pricing, availability payment arrangements, transit-oriented development, and shared use arrangements.

The Administration believes a National Infrastructure Bank will be a valuable tool for financing our surface transportation needs. The Administration encourages Congress to support the creation of a National Infrastructure Bank and not substitute in its place a national infrastructure grant program in conjunction with increases for transportation infrastructure credit. Once established, a Bank will help forge a new path forward in infrastructure sponsorship and cross-jurisdictional partnership. The Administration looks forward to working with the Congress as soon as possible to authorize a National Infrastructure Bank, which could blend grant and credit financing. The Bank will play a

key role in supporting regionally and nationally significant, high-value, multi-modal projects selected on the basis of merit.

The Administration has articulated several priorities for the Nation's transportation system, which will shape the Administration's transportation policies as we approach reauthorization, including policies regarding public-private partnerships. We want a transportation system that will enhance the Nation's economic competitiveness, improve transportation safety, improve energy efficiency, and enhance livability. We need a transportation funding system that will support the achievement of these goals.

In the long run, one of our key goals is to increase the economic competitiveness of our Nation by investing more aggressively in our future. Just as past generations built the transcontinental railroad, the Erie Canal, and the Interstate Highway System, our generation must build the transportation infrastructure that our Nation will need in the 21st Century. Enhancing our economic competitiveness requires a transportation system that reduces costs and is more reliable for both passengers and businesses. We need a transportation system that achieves a state of good repair and that achieves a high level of performance. Increasing the economic competitiveness of our transportation system will also require us to target our investment more carefully by using the best analytical tools available.

We also need to make sure that our investment allows us to begin making progress on halting the seemingly inexorable growth of greenhouse gases in our atmosphere, and that means reducing the carbon footprint of the Nation's transportation system.

We also must ensure sure that our transportation investment enhances the livability of our communities. We need to build a transportation system that gives our citizens the choices they want—to get to their destinations by the transportation mode of their choice, whether that is driving, public transportation, bicycling, or walking.

Safety will continue to be a high priority for the Department. The total number of transportation fatalities in the country is unacceptable. Innovation and technology will be critical to improving vehicle and infrastructure safety. As safety problems vary from State to State, data-driven, performance oriented programs must be established to identify the most cost-effective strategies to improve safety in each jurisdiction.

CONCLUSION

Going forward, we must continue to build upon the Recovery Act's investments in transportation infrastructure. As we evaluate the long-term options for funding surface transportation, we need to focus on funding mechanisms that will support investment in transportation projects that enhance our quality of life and help us compete economically. Well-designed public-private partnerships that protect the public interest can be an important tool to help bring additional investments to meet our infrastructure needs.